

Application No. 10/803,281
Amendment and Response Dated November 28, 2006
In response to the Office Action of August 30, 2006

Remarks

Information Disclosure Statement

The Office Action noted that a reference was “not correctly identified” in the Applicants’ initial Information Disclosure Statement. (8/30/2006 Office Action, p. 2.) Applicants therefore submit a Supplemental Information Disclosure Statement, which further identifies the reference at issue, accompanied by the requisite fee.

Status of the Claims

Claims 1-15 are currently pending in this application.

Applicants submit that the claims are in condition for allowance. To the extent that the pending rejections are maintained against the amended claims, Applicants respectfully traverse each of the currently pending rejections, and specifically address each of the pending rejections in sections I-III below.

I. 35 U.S.C. § 112

Claim 11 was “rejected under 35 U.S.C. 112, second paragraph, as being indefinite” because it recited a “lifting point refuse cart.” (8/30/2006 Office Action, p. 2.) This claim language, associated with the first lifting point, has been amended and now accords with the claim language associated with the second lifting point, *i.e.*, “lifting point refuse cart” is now “lifting point of a refuse cart.”

Claims 12, 13, and 15 were “rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as his invention” because these claims allegedly included “no positively recited steps.” (8/30/2006 Office Action, p. 2.) Applicants respectfully disagree. As dependent claims, the claims necessarily include the positively recited “operating” steps of Claim 11. 35 U.S.C. § 112, fourth paragraph (“A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.”). Claims 12, 13, and 15 simply further describe the structure associated with those steps. Nevertheless, Claims 12-15 have been amended to further clarify that the described structure is associated with the positively recited steps of the claims from which Claims 12-15 depend.

II. 35 U.S.C. § 102

Claim 11 was rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,024,573 (“Redding”). (8/30/2006 Office Action, p. 3.) It is not clear if the Office Action is also rejecting Claim 13 as being anticipated by Redding when it states “[r]egarding claim 13 Redding further disclose providing the hopper edge at the rear of the vehicle.” (*Id.*)

In any case, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987); MPEP § 2131. The office action fails to demonstrate that Redding discloses every element of Claim 11 or Claim 13 (which includes every limitation of Claim 11). For example, the Office Action does not identify any disclosure in Redding of “operating the refuse cart lifter to empty refuse from the refuse cart into the refuse hopper at a location substantially inward of the lower

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hopper edge.” This element is present in Claims 11 and 13. Thus, Applicants respectfully traverse the rejection.

Similarly, Claims 11-13 were rejected under 35 U.S.C. § 102(a) as being anticipated by United States Patent No. 6,503,045 (“Arrez”). (8/30/2006 Office Action, p. 3.) The Office Action further states “[r]egarding claims 12 and 13 **Redding** further disclose providing the hopper edge at the rear or the side of the vehicle.” (*Id.*) (emphasis added). The applicant assumes the office action meant Arrez, not Redding. In any case, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros.*, 814 F.2d at 631; MPEP § 2131. The Office Action fails to demonstrate that Arrez or Redding discloses every element of Claims 11-13. For example, the Office Action does not identify any disclosure in Arrez or Redding of “operating the refuse cart lifter to empty refuse from the refuse cart into the refuse hopper at a location substantially inward of the lower hopper edge.” This element is present in Claims 11-13. Thus, Applicants respectfully traverse the rejection.

Thus, Applicants respectfully submit that Claims 11-13 are not anticipated by the cited prior art references. Applicants respectfully request that the anticipation rejections be withdrawn and that the presently pending claims be allowed.

III. 35 U.S.C. § 103

Claims 1-10 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. in view of Arrez et al.” (8/30/2006 Office Action, p. 4.) Applicants respectfully submit that

the Office Action has failed to establish a case of *prima facie* obviousness for at least the reasons provided below.

M.P.E.P. §2142 states that “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.”

Even in combination, the cited references do not disclose all of the elements of independent claim 1 or independent Claim 6. For example, independent Claim 1 recites the limitation “the upper end of the faceplate is capable of being rotated above and substantially behind the baseplate when the lifting device is emptying a refuse cart.” Dependent Claims 2-5 include the limitations of Claim 1. Neither Redding nor Arrez teach or suggest this claim limitation. Thus, Applicants respectfully traverse the rejection with respect to Claims 1-5.

Similarly, independent Claim 6 recites the limitation “the upper end of the faceplate is capable of being rotated above and substantially inward of the lower hopper edge when the lifting device is emptying a refuse cart.” Dependent Claims 7-10 include the limitations of Claim 6. Neither Redding nor Arrez teach or suggest this claim limitation. Thus, Applicants respectfully traverse the rejection with respect to Claims 6-10.

Application No. 10/803,281
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Claims 14 and 15 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. as applied to claim 11 above, and in further view of Arrez et al.” (8/30/2006 Office Action, p. 5.) The Applicant respectfully submits that the Office Action has failed to establish a case of *prima facie* obviousness for at least the reasons provided below.

M.P.E.P. §2142 states that “[t]o establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Even in combination, the cited references do not disclose all of the elements of dependent claims 14 or 15. Claims 14 and 15 include the following limitation of Claim 11: “operating the refuse cart lifter to empty refuse from the refuse cart into the refuse hopper at a location substantially inward of the lower hopper edge.” Neither Redding nor Arrez teach or suggest this limitation. Thus, Applicants respectfully traverse the rejection with respect to Claims 14 and 15.

Thus, Applicants respectfully submit that Claims 1-10, 14 and 15 would not have been obvious in view of the cited prior art references. Applicants respectfully request that the obviousness rejections be withdrawn and that the presently pending claims be allowed.

Conclusion

Applicants submit that Claims 1-15 are patentable over the cited prior art and request withdrawal of the rejections set forth in the Office Action dated August 30, 2006.

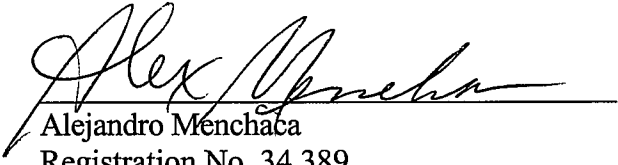
If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney for the Applicants. Applicants believe

Application No. 10/803,281
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that a fee \$180.00 is currently due. However, the Commissioner is hereby authorized to charge any necessary fees or credit any overpayment to Deposit Account 13-0017.

Dated:

Respectfully submitted,

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